

**LIVESTOCK FACILITY SITING REVIEW BOARD**  
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, PO Box 8911  
Madison, WI 53708-8911

<u>Adam &amp; Jennifer Friemoth</u> , Aggrieved Person(s)  v. <u>Walworth County Land Use</u> , City, Village, Town, or County <u>Resource Management Department (LURM)</u>	<b>REQUEST FOR REVIEW OF A DECISION REGARDING AN APPLICATION FOR LOCAL APPROVAL</b>  Docket No. _____
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Notice is hereby given that Adam & Jennifer Friemoth ("Aggrieved Person") hereby requests review of the decision of the following political subdivision:

NAME: Walworth County LURM ~~Dept~~ Department

CITY, TOWN, VILLAGE or COUNTY (please circle)

COUNTY WHERE POLITICAL SUBDIVISION IS LOCATED: Walworth County

ADDRESS: 100 W. Walworth St., P.O. Box 1001, Elkhorn, WI 53121

regarding the application of local approval submitted by the following applicant:

NAME: Adam & Jennifer Friemoth

ADDRESS: W2919 County Road D, Elkhorn, WI 53121  
(Provide information from Lines 1, 4 and 5 of Application of Local Approval).

The request for review is requested by a person who (check all that apply):

- ☒ Applied to a political subdivision for approval of a livestock facility siting or expansion.
- ☐ Lives within 2 miles of a livestock facility that is proposed to be sited or expanded.
- ☐ Who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

An aggrieved person may challenge the decision of a political subdivision on the grounds that the political subdivision incorrectly applied the state standards that are applicable to new and expanded livestock facilities, or violated s. 93.90(3), Wis. Stats.

**ATTACHED IS A CONCISE STATEMENT OF THE ISSUE OR ISSUES YOU ARE CHALLENGING, PROVIDING THE GROUNDS AND ARGUMENTS IN SUPPORT OF YOUR CHALLENGE. DO NOT EXCEED TEN (8 1/2" x 11") PAGES WITH A FONT NO SMALLER THAN 12 POINT.**

Name(s) of Aggrieved Person(s): Adam & Jennifer Friemoth

Signature(s) of Aggrieved Person(s): Adam Friemoth Jennifer Friemoth

Address: 102919 County Road D; Elkhorn, WI 53121

Telephone: 262-378-2011

Representative (if any): Self

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

All communications, documents and papers submitted to the board by any attorney, and preferably by any aggrieved person, shall be one copy by an electronically transmitted .pdf file which can be read and copied easily with current technology. The e-mail address is: [SitingBoard@wisconsin.gov](mailto:SitingBoard@wisconsin.gov)

This is a request for review by Adam and Jennifer Friemoth challenging the decision made by Walworth County Land Use and Resource Management Department z(County) in concerns for our conditional use permit (CUP) granted by the County under Wis. Stat. 93.9 (3). The County has adopted the state siting laws as part of its zoning ordinance. We are disputing certain conditions that the County has issued in our CUP, based on the grounds that the conditions are in violation of Wis. Stat. 93.90(3)(ar) and ATCP 51. We are grateful that the county has recognized that we have accurately completed our Livestock Siting Permit application and granted us with the permit however we are asking that the Board reverse the County's decision to impose the following conditions.

The issues that we are disputing and or need clarification on are for the following conditions: #1,#2, #7, and #12. A complete list of the Conditions from the County is provided at the end of our request.

Condition #1 reads as follows:

Approved as per plan submitted as a dairy feedlot with a limit of 994 animal units subject to all additional conditions.

Under the General it reads: For a dairy operation for up to 944 animal units. Was the 994 in #1 a typo or do we have a permit for up to 994?

Condition #2 reads as follows:

Hours shall be 24 hours per day. No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m.

All of our trucks are DOT compliant and we are abiding by the Implement of Husbandry laws for our state and townships. The hours of restrictions are especially harsh considering the additional condition of condition #7.

Condition #7 reads as follows:

The applicant must provide adequate manure storage. Storage shall be available for at least 4 months on site in order to allow storage during the winter months when manure will not be able to be incorporated to reduce odor. All manure spreading, except manure dewatering, from County approved storage facilities must be incorporated in the ground within 24 hours of spreading in order to limit odor from the farm operations. Exception for incorporation shall be allowed for spreading on hay ground. The storage facilities must be emptied within two weeks of any time that spreading begins. The applicant shall keep a record of the date that spreading begins and the date on which the storage facility has been emptied. If the applicant cannot empty the manure storage facility in the required time frame using existing equipment and

farmland then the applicant may need to make arrangements with a commercial manure disposal company.

In 2014 we had NRCS design and approve a 5.6 million gallon manure pit with a 1' freeboard. This is designed for 285 days of storage for the approved 944 animal units. We built it this large so that we could avoid the fragile soil and roads in the spring as well as avoiding emptying several times per year. We empty our manure pit completely in the fall. We also apply some of the liquids on our hay ground after harvesting as long as weather conditions allow. Fall application leads to less soil compaction and the roads are not as fragile.

We currently have 150 acres of hay ground that we are transitioning into organic ground. We feel that the only economical way of fertilizing this ground is with manure application. With the current condition #7 it reads that the facility must be emptied within two weeks of any time that spreading begins. This is not possible when we are applying liquids after hay cuttings as it is prime growing season for all of our corn crops. Applying solids to hay ground will kill the plants. Our furthest hay field is 6 miles away and I-43 is between our farm and most of our hay fields making it not practical for tube applications. We understand that the County has probably implemented this particular condition because they don't want farmers to "Drag their feet" on emptying manure facilities, however with the additional time restriction of condition #2 this adds additional limitations. We try and empty the manure pit in a timely fashion as we custom empty several other farms manure pits and have to get this all done as quickly as possible. The same equipment that we have invested in for our farm we also use for custom hauling.

Currently under Condition #7 we need to empty the pit within two weeks. This does not take into account weather conditions, is it expected of us to continue to haul in the rain? If we were to haul in the rain our soil compaction would be irreversible for years to come and the roads would be a mess.

We are asking that Condition #7 be completely removed. This is the most debilitating condition for our dairy operation. We are asking the Board to consider removing this condition as the County is in clear violation of Wis. Stat. 93.90(3) and ATCP 51.10(3).

Condition #12 reads as follows:

The applicant will be responsible for cleaning tracked soil or manure resulting from the farm operations off the Township or County Roadways on a daily basis.

We have agreed to clean off any foreign materials from the road that occur from our operations on an as needed basis. It is not very often that we do make a mess on the road and we feel that cleaning the roads on a daily basis is an unnecessary condition.

Once again we are grateful for the County properly granting us a CUP under Wis. Stat 93.90 and ATP 51. However our ability to operate under the CUP is dependent upon compliance with the conditions that the County had no lawful authority to impose. In accordance to ATP 51.10(3) and Wi. Stat. 93.9 (3)( ar) Notwithstanding par. (ae) a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

1. Adopts the requirement by ordinance before the applicant files the application for approval.
2. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

The County has not adopted prior zoning ordinances other than state standards and ATP 51 therefore we feel that imposing additional conditions would by definition be amending the state standards.

We are respectfully requesting that the Board reverses the County's implementation of Conditions #2 and #7, confirm the clarification needed for Condition #1, allow Condition #12 to read as follows: The applicant will be responsible for cleaning tracked soil or manure resulting from the farm operations off the Township or County Roadways on **an as needed** basis, and confirm that the remaining conditions are limited to compliance with state standards according to ATP 51.

Thank you very much for your time and considerations!

Adam and Jennifer Friemoth



NAME: Adam Friemoth / Jennifer Friemoth

TOWN: LaFayette

The property owner is requesting conditional use approval for a Live Stock Siting permit as a conditional use for up to 944 animal units for expansion of an existing dairy operation.

Land Use and Resource  
Management Department

Tax Parcel KA468900001.

Has been APPROVED subject to the following conditions:

General: For a dairy operation for up to 944 animal units.

1. Approved as per plan submitted as a dairy feedlot with a limit of 994 animal units subject to all additional conditions.
2. Hours shall be 24 hours per day. No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m.
3. The site must meet all applicable Federal, State, County and local regulations including any State well or water supply requirements.
4. The applicant must obtain the required zoning permit prior to construction.
5. Applicant must obtain approval of a nutrient management plan from the County Land Conservation Office. The plan must meet with all requirements of the County and the Wisconsin Dept. of Natural Resources. The applicant must comply with all recommendations of the approved nutrient management plan.
6. The applicant must install and maintain safety fencing around the manure storage facility if required by the manure storage ordinance.
7. The applicant must provide adequate manure storage. Storage shall be available for at least 4 months on site in order to allow storage during the winter months when manure will not be able to be incorporated to reduce odor. All manure spreading, except for manure dewatering, from County approved storage facilities must be incorporated in the ground within 24 hours of spreading in order to limit odor from the farm operations. Exception for incorporation shall be allowed for spreading on hay ground. The storage facilities must be emptied within two weeks of any time that spreading begins. The applicant shall keep a record of the date that spreading begins and the date on which the storage facility has been emptied. If the applicant cannot empty the manure storage facility in the required time frame using existing equipment and farmland then the applicant may need to make arrangements with a commercial manure disposal company.

100 West Walworth Street  
P.O. Box 1001  
Room 222  
Elkhorn, WI 53121  
Planning/Zoning/Sanitation/  
Conservation Divisions  
262.741.4972 tel  
262.741.4974 fax  
262.741.4973 fax



8. All structures shown on the approved conditional use plan shall fit within the footprint shown or a separate required zoning permit review fees shall be charged prior to zoning permit review.
9. Failure to begin construction on structures shown on the approved conditional use plan within two years of the conditional use approval shall result in the need for a separate zoning permit, fee and permit review.
10. All development on site shall be conducted in compliance with State Statute Chapter 51 and appendix A application and worksheets.
11. All outside lighting must be shielded and directed on site.
12. The applicant will be responsible for cleaning tracked soil or manure resulting from the farm operations off the Township or County Roadways on a daily basis.
13. If the Land Management Department determines that changes in either the character of the use or the intensity of the use are not consistent with this approval, then those changes must be brought before the County Zoning Agency for approval.
14. Failure to actively exercise this conditional use within three years of the approval date shall result in automatic dismissal without prejudice. The property owner may request a time extension for actively exercising the conditional use. A time extension for actively exercising the conditional use must be requested in writing during the original three year period. Any extension requested during the three year active exercise period greater than one year beyond the original three year period shall require additional Town and County committee approvals.

Specific:

15. An animal waste storage permit must be applied for and the manure structure must be designed and approved by a licensed engineer according to NRCS Technical standard 313.

Dated this 21<sup>st</sup> day of September, 2017.



COUNTY ZONING AGENCY  
TIM BRELLETHIN, CHAIRMAN

cc: Town of LaFayette, Daniel Cooper, Chairman, N6221 Tamarack Court, Elkhorn, WI 53121  
Town of LaFayette, Barbara A. Fischer, Clerk, N6221 Tamarack Court, Elkhorn, WI 53121  
Rebecca J. Roeker, von Briesen & Roper, S.C., 411 East Wisconsin Avenue, Suite 1000, Milwaukee, WI 53202 (per request)